

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL J. BRODHEIM,

Plaintiff, No. CIV S-02-0573 FCD EFB P

vs.

MICHAEL CRY, et al.,

Defendants. ORDER

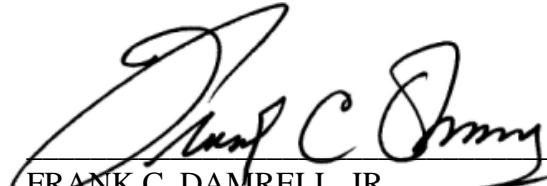
On October 4 and 22, 2007, plaintiff filed motions asking the court to reconsider its September 25, 2007, order granting defendants' motion for summary judgment. Plaintiff claims that because the court previously found that he had stated a claim against defendants in its findings and recommendations filed August 5, 2005, that the court's findings and recommendations of September 25, 2007, granting defendants' motion for summary judgment constitutes an abuse of discretion. Plaintiff fails to recognize that the court's findings and recommendations of August 5, 2005, found that plaintiff had stated a claim such that would overcome a motion to dismiss, and directed defendants to answer the complaint. Defendants did so with a motion for summary judgment, on which they prevailed. The court's grant of summary judgment in favor of defendants is not an abuse of discretion.

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1 Therefore, plaintiff's motion does not meet the requirements of Fed. R. Civ. P. 59(e) or  
2 60(b). With respect to Rule 59(e), plaintiff has failed to 1) present the court with newly  
3 discovered evidence, 2) show that the court committed clear error or that the decision was  
4 manifestly unjust; or 3) identify an intervening change in controlling law. Dixon v. Wallowa  
5 County, 336 F.3d 1013, 1022 (9th Cir. 2003). With respect to Rule 60(b), plaintiff has failed to  
6 show 1) mistake, surprise or excusable neglect; 2) newly discovered evidence; 3) fraud; 4) a void  
7 judgment; 5) a satisfied or discharged judgment; or 6) extraordinary circumstances. Fed. R. Civ.  
8 P. 60(b).

9 Accordingly, IT IS HEREBY ORDERED that plaintiff's October 4 and 22, 2007, motion  
10 for reconsideration (court file doc. #192 and 193) are denied.

11 DATED: November 7, 2007.

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FRANK C. DAMRELL, JR.  
UNITED STATES DISTRICT JUDGE